

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF NEW YORK, *et al.*,

Plaintiffs

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1233 (CKK)

ORDER

Presently pending before the Court is Microsoft's "Motion for Dismissal of the Non-Settling States' Demand for Equitable Relief." In its motion, Microsoft argues, *inter alia*, that the Litigating States "lack *parens patriae* standing to obtain the relief they seek under federal law." Microsoft Mot. to Dismiss at 2. In this regard, Microsoft professes concern that the continued litigation in the above-captioned case threatens to "displace" the United States "in its role of establishing national competition policy." *Id.* at 1-2. Microsoft punctuates this professed concern with its assertion that the Litigating States are attempting to "override decisions about the enforcement of federal law made by Officers of the United States" and to "impermissibly interfere with the President's duty to 'take Care that the Laws be faithfully executed.'" *Id.* at 27 (quoting U.S. Const. art. II, § 3). In response to Microsoft's motion, the Court has received the opposition memorandum filed by the Litigating States, as well as filings on behalf of twenty-five other States in the role of *amici curiae*.¹ Of particular note is the assertion in the amicus brief

¹The Court received an amicus brief filed on behalf of the State of New York, as well as an amicus brief filed on behalf of the States of Arizona, Arkansas, Colorado, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Vermont,

filed by the State of New York that “the United States itself has affirmed the Litigating States’ independent authority to seek equitable relief in Civil Action No. 98-1233.” New York Amicus Br. at 14. In light of Microsoft’s apparent concern for the authority of the United States and the assertion by the State of New York that the United States has a position on the issues raised in Microsoft’s motion to dismiss, it seems most prudent to ask the United States to enlighten the Court with its views on the issues raised in Microsoft’s motion and the responses thereto. Accordingly, the Court requests that the United States responds, in the role of amicus curiae, to Microsoft’s motion to dismiss.

Based on the foregoing, it is this 25th day of March, 2002, hereby

ORDERED that the United States is invited to file an amicus brief with the Court in the above-captioned matter; and it is further

ORDERED that if the United States chooses to file an amicus brief, it shall do so not later than April 15, 2002.

SO ORDERED.

COLLEEN KOLLAR-KOTELLY
United States District Judge

Washington, and Wisconsin, and the Commonwealth of Kentucky.